

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:00-CR-00105-F-1

No. 7:12-CV-00223-F

DUANE MONTRIK BURTON,)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
Respondent.)	

This matter is before the court on the Memorandum and Recommendation (“M&R”) [DE-79] of United States Magistrate Judge Robert B. Jones, Jr., regarding Duane Montrik Burton’s Motions to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-61, DE-64].

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with making a *de novo* determination of those portions of the recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1). In the absence of a timely-filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

On April 27, 2015, the Magistrate Judge issued a M&R recommending that Burton’s

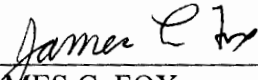
§ 2255 motions be denied and the Government's motion to dismiss be allowed. [DE-79] at 8-9.

The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the M&R and the consequences if they failed to do so. Burton has filed no objections, and the time for doing so expired on May 14, 2015.

Upon careful review of the M&R and of the record generally, and having found no clear error, the court hereby ADOPTS the recommendation of the Magistrate Judge. It is therefore ORDERED that the Government's Motion to Dismiss [DE-67] is ALLOWED, and Burton's § 2255 motions [DE-61, DE-64] are DISMISSED. The court has reviewed the arguments raised, and in light of the applicable standard, a certificate of appealability is DENIED.

SO ORDERED.

This, the 18th day of May, 2015.



JAMES C. FOX
Senior United States District Judge